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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re GABRIELLE B. et al., Persons  
Coming Under the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

A.G.,

Defendant and Appellant.

D062837

(Super. Ct. No. J518444A-C)

APPEAL from a judgment of the Superior Court of San Diego County, David B. Oberholtzer, Judge. Affirmed.

A.G. appeals a judgment following a dispositional hearing held under Welfare and Institutions Code section 361, subdivision (c).<sup>1</sup> She contends the juvenile court did not conduct an adequate inquiry into her husband's status as the minor child's presumed father under Family Code section 7611, subdivision (d) and erred when it did not determine his paternity status. She argues the error is not harmless because had the juvenile court determined

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise specified.

parentage status, her husband, Jeremiah G., would have qualified as presumed father and received court-ordered family reunification services. A.G. asserts Jeremiah's ineligibility for services as a stepparent will impede or prevent family reunification.

We conclude that the juvenile court conducted an adequate parentage inquiry under section 316.2. The information provided to the court at the detention hearing was sufficient to establish that Jeremiah was an alleged father of the minor child. Jeremiah had notice of the proceedings and an opportunity to appear and assert his parentage status. Jeremiah did not seek to change his parentage status from alleged father to presumed father. The juvenile court is not required to determine paternity status under Family Code section 7611 where the alleged father does not identify himself as the dependent child's presumed father and seek such a determination. Accordingly, we affirm the judgment.

#### FACTUAL AND PROCEDURAL BACKGROUND

A.G. is the mother of four children, Gabrielle B., Elizabeth B., Ashton B.,<sup>2</sup> and Greyson G., ages 16, 15, nine and eight years, respectively. A.G. is married to Jeremiah G., who is Greyson's father. Gabrielle and Elizabeth's father is James B. Ashton's alleged biological father was not involved in his life. Ashton had lived with Jeremiah since he was a baby. He believed that Jeremiah was his father.

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<sup>2</sup> This appeal concerns only Ashton.

On June 21, 2012, the San Diego County Health and Human Services Agency (Agency) detained Gabrielle, Elizabeth and Ashton (the children) in protective custody.<sup>3</sup> The Agency alleged the children had emotional disorders that were caused by their stepfather's abusive conduct and their mother's inability to structure a safe home environment. The family had a history of child welfare referrals. The children were afraid of Jeremiah. They said he pushed them down stairs, hit, slapped and spanked them, swore and screamed at them and threw objects at them. Ashton said these incidents occurred "[p]retty much every day." He described an incident in which Jeremiah held him by his neck against a wall, choking him.

A.G. and Jeremiah acknowledged that Jeremiah had an anger problem. A.G. said Jeremiah was rough with the children but would not hurt them. They also claimed his actions were strict disciplinary techniques used when necessary to control Ashton's behaviors.

Ashton was withdrawn and depressed, displayed temper tantrums and refused to follow directions. After he was detained with his grandmother, Ashton's behaviors worsened. He was hospitalized after he threw items, kicked his aunt in the stomach, scratched his uncle and pinned his grandmother against the wall and kicked her.

The detention hearing was held on June 22. Jeremiah was present in the courtroom. A.G. filed a parentage inquiry naming Chad B. as Ashton's father, stating they had a relationship in 2002.<sup>4</sup> Ashton was born in April 2003. Chad never supported Ashton or had

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<sup>3</sup> The Agency did not file a section 300 petition on behalf of Greyson, who remained in the custody of his parents. At the dispositional hearing, the juvenile court placed Gabrielle and Elizabeth with their father. After issuing custody and visitation orders, the court dismissed their dependency cases.

<sup>4</sup> In August 2012, the Agency contacted Chad. He acknowledged he might be Ashton's father. He did not appear in the case or assert paternity.

him in his home. A.G. married Jeremiah in December 2004. At the close of the detention hearing, fifteen-year-old Gabrielle said she considered Jeremiah to be her father and asked the court to provide reunification services to him. She expressed concerns about Ashton because he considered Jeremiah to be his father and was not aware that he had a different biological father. Minors' counsel asked the juvenile court to provide services to Jeremiah, if he decided to enter the case.

The juvenile court said if it determined that Jeremiah was the children's presumed father, it would order the Agency to provide family reunification services to him. The juvenile court asked whether there was a category of "alleged presumed father." County counsel responded there was no such category.

Jeremiah was also present at a hearing on July 10, 2012. A.G. said she and Jeremiah were not going to divorce or separate. Jeremiah was planning to participate in anger management services and parenting classes. The juvenile court said Jeremiah's conduct was "a big part of this case" and wanted him to undergo a court-ordered psychological evaluation. The Agency objected, stating that alleged fathers and stepfathers of dependent children are not entitled to reunification services. The juvenile court questioned the value of opening a dependency case if it could not order services for Jeremiah.

Minors' counsel advised the juvenile court that after Gabrielle had asked whether Jeremiah could obtain presumed father status, Jeremiah consulted with counsel and chose not to enter the case. Minors' counsel said she shared the court's concern about the prospects of family reunification if Jeremiah did not receive services; however, Jeremiah chose not to seek presumed father status. Jeremiah did not ask to be heard at that hearing. He did not subsequently seek to change his parentage status.

At the jurisdictional/dispositional hearing,<sup>5</sup> after sustaining the dependency petitions, the juvenile found that Ashton had severe emotional problems and placed him in a group home. A.G.'s counsel asked the juvenile court to provide services to Jeremiah, stating "if we don't offer the stepfather any services, we're effectively cutting him out of the family. And he has a biological child in the home." The court endorsed counsel's remarks and added, "We're not doing this family any good if we don't help the stepfather." The Agency said there was no statutory authority to order services for Jeremiah. However, it would provide referrals to services Jeremiah could obtain on his own, and include Jeremiah in conjoint therapy with Ashton and A.G., if recommended by their therapists.

## DISCUSSION

A.G. argues the parentage inquiry under section 316.2 was inadequate. She contends the juvenile court erred when it accepted county counsel's representation there was no such category as "alleged presumed father." A.G. maintains the juvenile court has a sua sponte responsibility to determine an alleged father's paternity status. She argues the errors are not harmless because had the juvenile court proceeded under the correct legal standards, it would likely have determined that Jeremiah was Ashton's presumed father and ordered the Agency to provide family reunification services to him.

The Agency contends A.G. lacks standing to challenge the adequacy of the juvenile court's inquiry into Jeremiah's paternity status. It also argues she forfeited her right to raise the issue on appeal. On the merits, the Agency asserts the juvenile court conducted an adequate

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<sup>5</sup> Jeremiah testified at the hearing and was asked to step out of the courtroom during Elizabeth's testimony. Elizabeth did not object to his presence. The juvenile court asked the bailiff to tell Jeremiah he could return to the courtroom. The record does not indicate whether he was present during the remainder of the hearing.

inquiry under section 316.2 and the court was not required to determine whether Jeremiah was Ashton's presumed father because he chose not to seek presumed father status.

A

*A.G. Has Forfeited the Issues on Appeal*

Assuming without deciding A.G. has standing to raise the issues of adequate parentage inquiry and the juvenile court's sua sponte responsibility to determine parentage status, we conclude that A.G. has forfeited the issues by failing to raise them in the juvenile court. Forfeiture, also referred to as " 'waiver,' " applies in juvenile dependency litigation and is intended to prevent a party from standing by silently until the conclusion of the proceedings. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 222.) A party may not assert theories on appeal that were not raised in the trial court. (*Fretland v. County of Humboldt* (1999) 69 Cal.App.4th 1478, 1489.)

A.G. was present at the June 22 detention hearing, the hearing on July 10 and the September 14 contested jurisdiction/disposition hearing. The question of Jeremiah's status as the children's presumed father was raised and discussed at the hearings on June 22 and July 10. Jeremiah's eligibility for services was discussed at all three hearings. A.G. failed to bring to the juvenile court's attention her assertions the parentage inquiry was inadequate and that as a matter of law, the court was required to determine Jeremiah's status as Ashton's presumed father and provide reunification services to him. Had she done so, the court could have considered her claims. Even if the doctrine of forfeiture did not apply, we would not be persuaded by A.G.'s argument.

## B

### *The Parentage Inquiry Was Adequate*

Section 316.2 directs the juvenile court to determine parentage as soon as possible. At the detention hearing, or as soon thereafter as practicable, the juvenile court is required to inquire of the mother and any other appropriate person as to the identity and address of all presumed or alleged fathers, including whether any man qualifies as a presumed father under section 7611, or any other provision, of the Family Code. (§ 316.2, subd. (a); Cal. Rules of Court, rule 5.635(b).)<sup>6</sup> The presence of a man claiming to be the father does not relieve the court of its duty of inquiry, which should include the question whether any man otherwise qualifies as a presumed father under applicable Family Code provisions. (§ 316.2, subd. (a).)

A father's status is significant in dependency cases because it determines the extent to which the father may participate in the proceedings and the rights to which he is entitled. (*In re Christopher M.* (2003) 113 Cal.App.4th 155, 159.) Dependency law recognizes three types of fathers—presumed, alleged and biological. (*In re Zacharia D.* (1993) 6 Cal.4th 435, 449, fn. 15 (*Zacharia D.*)) A presumed father meets one or more specified criteria listed in Family Code section 7611. (*Zacharia D.*, at p. 449.) A biological father is one who has established biological paternity but has not achieved presumed father status. (*Id.* at p. 449, fn. 15.) A man who may be the biological father of a child, but whose biological paternity has not been established, is an alleged father. Similarly, a man who is not necessarily the child's biological father but who may achieve presumed father status under Family Code section 7611 is an alleged father. (*Zacharia D.*, at p. 449, fn. 15.)

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<sup>6</sup> Further rule references are to the California Rules of Court.

Only a presumed father is entitled to family reunification services and custody of the child. (§ 361.5, subd. (a); *In re T.R.* (2005) 132 Cal.App.4th 1202, 1209.) The juvenile court may offer or provide court-ordered reunification services to the child's biological father. (§ 361.5, subd. (a).) An alleged father is entitled only to notice, an opportunity to appear and assert a position and attempt to change his paternity status in accordance with section 316.2. (*In re Kobe A.* (2007) 146 Cal.App.4th 1113, 1120 (*Kobe A.*).)

Whether the juvenile court conducted an adequate inquiry into Jeremiah's paternity status does not involve an issue of disputed fact. When facts are not in dispute, the legal significance of those facts is a question of law. (*Ghirardo v. Antoniolio* (1996) 14 Cal.4th 39, 51.)

We agree with A.G.'s contention the Agency incorrectly asserted there was no category of "alleged presumed father." A man who is not the child's biological father may attain status as the child's presumed father. (*Zacharia D.*, *supra*, 6 Cal.4th at p. 449, fn. 15; see, e.g., Fam. Code, § 7611, subd. (d) [a man is presumed to be the natural father of a child if he receives the child into his home and openly holds out the child as his own].) The evidence and information presented at the detention hearing indicated Jeremiah may have qualified as Ashton's presumed father under Family Code section 7611, subdivision (d). Thus he was an alleged father.

On this record, we are not persuaded that any misunderstanding about Jeremiah's status as an alleged father was material. The purpose of a parentage inquiry under section 316.2 is to identify all presumed and alleged fathers, and provide them with notice and an opportunity to appear and assert paternity. (§ 316.2; *Kobe A.*, *supra*, 146 Cal.App.4th at p. 1121.) Jeremiah's parentage status was discussed in his presence in court on more than one occasion, and he did not seek clarification or ask to be heard. The record shows that Jeremiah received notice of the



proceedings and understood he had been classified as an alleged father. He also knew that as an alleged father, he was not entitled to reunification services but had the right to appear in Ashton's dependency proceedings and change his parentage status. The facts are clear and undisputed. Jeremiah, the juvenile court and the parties understood that Jeremiah was eligible to come forward and assert his status as Ashton's presumed father, but did not do so. Although informal,<sup>7</sup> the parentage inquiry was adequate.

### C

#### *The Juvenile Court Does Not Have a Sua Sponte Obligation to Determine Whether an Alleged Father Is the Child's Presumed Father*

A.G. argues the juvenile court erred when it did not determine whether Jeremiah was Ashton's presumed father under Family Code section 7611, subdivision (d). She contends the error is egregious because under the correct legal standards, the court would likely have

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<sup>7</sup> Rule 5.635(e) requires the juvenile court to provide Statement Regarding Paternity form JV-505 to each alleged father. Form JV-505 specifically informs an alleged father he can compel the court to determine his paternity, and gives him the means to request appointment of counsel, state his belief that he is the father of the child and ask that the court enter judgment of paternity. (*Kobe A.*, *supra*, 146 Cal.App.4th at p. 1121.) The record does not indicate the juvenile court asked Jeremiah to complete and submit form JV-505. (Rule 5.635(e).) The juvenile court should have also fulfilled its obligation to note its findings concerning the paternity status of Jeremiah and Ashton's alleged biological father in the minutes. (§ 316.2, subd. (f).) While it is the better practice to conform to the practices outlined by the rules, where an alleged father has actual notice of the proceedings and an opportunity to appear and change his parentage status, we cannot conclude the lack of formality resulted in error.

determined that Jeremiah was Ashton's presumed father and he would have been entitled to court-ordered family reunification services.<sup>8</sup> (§ 361.5, subd. (a).)

If a person appears at a dependency hearing and requests a judgment of parentage, the court must determine: (1) whether that person is the biological parent of the child; and (2) whether that person is the presumed parent of the child, *if that finding is requested*. (Rule 5.635(h); § 316.2, subd. (d).) A man seeking status as the child's presumed father under Family Code section 7611, subdivision (d), has the burden of establishing by a preponderance of the evidence he received the child into his home and held the child out as his own. (*In re Spencer W.* (1996) 48 Cal.App.4th 1647, 1652-1653 (*Spencer W.*).)

The issue whether the juvenile court has a sua sponte duty to determine an alleged father's status as presumed father under Family Code section 7611, subdivision (d) is an issue of statutory interpretation, which we review de novo. (*People ex rel. Lockyer v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 432.)

A.G.'s argument rests on the erroneous assumption an alleged father is entitled as a matter of law to the benefit of a presumption of parentage under Family Code section 7611, subdivision (d) without his coming forward and seeking presumed father status. (*Spencer W.*, *supra*, 48 Cal.App.4th at pp. 1652-1653.) To the contrary, the juvenile court is required to determine whether an alleged father is the presumed parent of the child only when the alleged

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<sup>8</sup> A.G. contends minors' counsel misrepresented Jeremiah's intent when she said he had met with counsel and chose not to assert he was Ashton's presumed father. The record shows that Jeremiah was present in court when minors' counsel described his decision and the circumstances in which it was made. In the absence of any objection to minors' counsel's statements by A.G. or Jeremiah, and Jeremiah's subsequent failure to come forward to request presumed father status, we have no basis to conclude that minors' counsel's representation about Jeremiah's intent to not seek presumed father status was erroneous.

father appears at a hearing and requests a judgment of parentage, or the child, the child's mother or agency files a parentage action. (§ 316.2, subds. (d) & (e);<sup>9</sup> rule 5.635(h).)

If Jeremiah had wanted to change his paternity status, it was his burden to request such a determination and show that he had received Ashton into his home and openly and publicly acknowledged paternity. (*Spencer W.*, *supra*, 48 Cal.App.4th at p. 1653; Fam. Code, § 7611, subd. (d).) The record shows that Jeremiah did not take any action to establish his status as Ashton's presumed father, and no other party filed a parentage action under Family Code section 7630. Thus the juvenile court was not required sua sponte to determine whether Jeremiah was Ashton's presumed father.<sup>10</sup> (§ 316.2, subd. (d); rule 5.635(h).)

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<sup>9</sup> Section 316.2, subdivisions (d) and (e) also reference former Family Code section 7631, which was repealed in 2011 (Stats. 2010, ch. 588, § 2).

<sup>10</sup> A.G. also argues the juvenile court should have determined whether Jeremiah was Ashton's presumed father because it found that Jeremiah's participation in services was important to family reunification. She accepts the Agency's position that *In re Silvia R.* (2008) 159 Cal.App.4th 337 (*Silvia R.*) prevents the juvenile court from ordering services to the stepparent of a dependent child.

Having determined that the juvenile court has no sua sponte obligation to decide whether an alleged father is the presumed father of a dependent child, we need not address the extent to which *Silvia R.* controls the provision of child welfare services to a child's stepparent where minor's counsel and the parent request such services, the stepparent is willing to voluntarily participate in services, and those services would improve the conditions in the parent's home, facilitate the safe return of the child to a safe home, address the needs of the child while in foster care and strengthen and stabilize the child's family. (§ 16501.1, subd. (a); see §§ 300.2 [goal of maximum protection for children may include provision of a full array of social and health services to help the child and family], 16501.1 [a broad range of child welfare services can be provided to children and their families]; accord, 42 U.S.C. § 629b(a) [child welfare services include services designed to promote the safety and well-being of children and families, and increase the strength and stability of families, including extended families]; see also, *In re Jodi B.* (1991) 227 Cal.App.3d 1322, 1329 ["Indeed, it should be self-evident that where the stepparent lives with the natural parent, stepparent participation may be critical to accomplish the goal of alleviating the conditions that led to removal of the child and returning him or her to the family unit. The right to seek the child's return, however, belongs to the parent alone, not to his or her spouse."].)

DISPOSITION

The judgment is affirmed.

HALLER, J.

WE CONCUR:

HUFFMAN, Acting P. J.

MCDONALD, J.